

Appl. No. : 10/775,734
Filed : February 9, 2004

REMARKS

By this paper, Claim 1 has been amended. Support for the amendment to Claim 1 can be found in the specification at least in paragraph [0040] and in Figure 1. No new matter has been added by this amendment. Claims 1-10 remain pending and presented for examination.

I. Rejection of Claims Under 35 U.S.C. § 103(a)

The Examiner has rejected Claims 1-3 and 5-9 under 35 U.S.C. § 103(a) as unpatentable over U.S. Patent No. 5,950,856 to Cinque in view of U.S. Patent No. 5,119,967 to Ercolani and U.S. Patent No. 5,325,991 to Williams. In rejecting these claims, the Examiner stated:

Cinque discloses a refreshment center comprising a rigid mold (one-piece molded article) with a first recessed portion sized to receive a plate and a circular hole 30 with a slot 31 for a stemmed glass. Cinque discloses the invention except for the L-shaped prong. Ercolani teaches a similarly configured refreshment center with a U-shaped support bracket beneath the cup, glass, or beverage holding portion to support the bottom of a beverage container. Williams teaches an L-shaped support for supporting the bottom of a beverage container. The U-shaped bracket is equivalent to two L-shaped brackets attached at their lower ends. Williams teaches an L-shaped support for supporting the bottom of a beverage container. It would have been obvious to modify the cup holder to have at least one L-shaped bracket in order to support the beverage container to reduce any stress on the sides of the circular opening of the holder.

The Examiner has rejected Claim 4 under 35 U.S.C. § 103(a) as unpatentable over Cinque in view of Ercolani and Williams and further in view of U.S. Patent No. 4,098,403 to Davis. In rejecting Claim 4, the Examiner stated:

The combination of Cinque-Ercolani-Williams discloses the invention except for the at least three L-shaped prongs. Davis teaches a beverage carrier with nine L-shaped prongs (14A with 34, 14b with 38, 14c with 42, 14d with 46, 14e with 46, ...). It would have been obvious to add more prongs to further support one beverage container or a multiple of beverage containers to strengthen and reduce the stress when only one or two prongs are used.

The Examiner has rejected Claim 10 under 35 U.S.C. § 103(a) as unpatentable over Cinque in view of Ercolani and Williams and further in view of U.S. Patent No. 3,027,826 to Morris. In rejecting Claim 10, the Examiner stated:

The combination of Cinque-Ercolani-Williams discloses the invention except for the ID stick. Morris teaches an ID stick (see col. 1, lines 35-40. It would have been obvious to add the ID stick and insert it into an ID stick or utensil opening 40 of Cinque in order to advertise and add the utility of stirring in one device.

For the reasons set forth below, Applicant respectfully submits that Claims 1-10 are patentable over any combination of the cited prior art.

A. *The Law of Obviousness*

To establish a *prima facie* case of obviousness, three basic criteria must be met: (1) there must be some suggestion or motivation to combine the reference teachings, (2) there must be a reasonable expectation of success, and (3) the references when combined must teach or suggest all of the claim limitations. See *M.P.E.P.* § 2143. It is well settled that "a showing of a suggestion, teaching or motivation to combine the prior art references is an 'essential component of an obviousness holding'." See, e.g., *Brown & Williamson Tobacco Corp. v. Philip Morris Inc.*, 229 F.3d 1120, 1124-25, 56 U.S.P.Q.2d 1456, 1459 (Fed. Cir. 2000). The Examiner can satisfy the burden of showing obviousness of the combination "only by showing some objective teaching in the prior art or knowledge generally available to one of ordinary skill in the art would lead that individual to combine the relevant teachings of the references." *In re Fitch*, 972 F.2d 1260, 1265, 23 U.S.P.Q.2d 1780, 1783 (Fed. Cir. 1992). "Determination of obviousness cannot be based on the hindsight combination of components selectively culled from the prior art to fit the parameters of the patented invention." *ATD Corp. v. Lydall, Inc.*, 159 F.3d 534, 546 (Fed. Cir. 1998). If the proposed modification or combination of the prior art would change the principle of operation of the prior art invention being modified, then the teachings of the references are not sufficient to render the claims *prima facie* obvious. See *M.P.E.P.* 2143.01(VI), *In re Ratti*, 270 F.2d 810 (CCPA 1959).

B. *The Cited Prior Art Does Not Teach Or Suggest Every Limitation Of Amended Claim 1*

The Examiner has argued that the U-shaped bracket of Cinque is equivalent to two L-shaped brackets that it would have been obvious to modify the Cinque reference to include the L-shaped brackets of Cinque and Williams in order to support the beverage container to reduce any stress on the sides of the circular opening of the holder.

The cited Cinque reference discloses a combination plate and cup holder. As noted by the Examiner, the cup holder portion of the Cinque device comprises a slot 31 which facilitates positioning of a stemmed glass within the cup holder portion. The Cinque device is capable of securely retaining tapered cups or other receptacles of a wide variety of sizes, due to the retaining force exerted by the interior edges of the cup holder portion. See, e.g., *Cinque*, at col. 2, line 61 to col. 3, line 6. Because of the lack of a supporting member positioned below the cupholder, the Cinque device is capable of securely retaining both stemmed glasses and tapered cups. See, e.g., *Cinque*, Figure 4. The cup or glass may be positioned within the cup holder portion and moved downwards, and the interior edges of the cup holder portion will inhibit downward movement of the cup or glass when a sufficiently wide portion of the cup or glass. The position of the base of the cup or glass relative to the cup holder portion is thus not constrained by the device, facilitating the retention of stemmed glasses in addition to tapered cups, as the base of the stemmed glass will generally extend further below the device than will the base of a tapered cup. Cinque notes that the cup, when held in that manner, is unlikely to fall out of the hole, even when tipped to a significant degree. See *Cinque*, at col. 3, ll. 4-6.

Both Ercolani and Williams teach a supporting member which is configured to retain the base of a glass or cup. As noted by the Examiner, the support bracket of Ercolani is U-shaped, and is adapted to engage the bottom of a container such as a glass, as can best be seen in Figure 2. See *Ercolani*, at col. 3, ll. 8-11. Similarly, Williams states that "the drinking cup will rest on the horizontal portion 16 which is sufficiently rigid to support the cup vertically and the attachment of the blanket at the edges serves to hold the cup in place." *Williams*, at col. 5, ll. 16-20, see also Figure 8. Thus, in both Ercolani and Williams, the support members inhibit downward movement of the base of the retained cup or glass in order to retain the glass in place.

Claim 1 as amended recites a refreshment center comprising an L-shaped prong comprising a bottom tip which extends less than halfway into the cylindrical space defined by the circular hole. The use of such an L-shaped prong permits retention of non-tapered containers, the bottoms of which will be retained by the L-shaped prong. See, e.g., *Specification at Figure 3*. However, such a prong also permits secure retention of as stemmed and other top-heavy beverage containers, as the downward movement of the base of a stemmed glass need not be inhibited by the L-shaped prong. See, e.g., *Specification at Figure 4*. Such stemmed and other top-heavy

beverage containers may instead be retained by the circular hole, and the bottom of the glass will be permitted to extend below the L-shaped prong. Such an L-shaped prong, which enables the refreshment device to retain containers in multiple ways, is not taught or suggested by either the Ercolani or Williams references.

Applicant also notes that the Examiner has identified Davis as disclosing L-shaped portions. Applicant notes that the teachings of Davis do not cure the deficiencies of the proposed combination, as Davis also teaches a support member upon which the base of the retained cup or glass must rest. In particular, Applicant notes that the components cited by the Examiner as L-shaped prongs form a part of a web 12 which extends across the base of each of the cup-engaging sections 16, 18, and 21. See, e.g., *Davis, Figure 2, and col. 2, ll. 10-17*. Thus, Williams also fails to teach or suggest an L-shaped prong comprising a bottom tip which extends less than halfway into the cylindrical space defined by the circular hole. Applicant notes as well that Morris does not disclose support members of any kind, as it is directed to a hand tool for holding and squeezing a slice of fruit. Thus, Applicant respectfully submits that Claim 1 is patentable over any combination of the prior art, as none of the cited prior art teaches or suggests an L-shaped prong comprising a bottom tip which extends less than halfway into the cylindrical space defined by the circular hole.

As Claims 2-10 depend from independent Claim 1, Applicant submits that they are also patentable for at least the reasons discussed with respect to Claim 1, as well as providing additional patentable distinctions. Thus, Applicant submits that each of Claims 1-10 are patentable over the cited prior art, and requests the withdrawal of the rejections of the same.

C. It Would Not Have Been Obvious To Combine Cinque With The Other References

Applicant also submits that it would not be obvious to modify the Cinque reference to include the support structures of Ercolani and Williams, as such a modification would change the principle of operation of the device of Cinque. The Cinque device securely retains a stemmed or tapered glass in place through constant contact with the sides of the device. This constant contact is facilitated by permitting the retained glass to slide downward as far as necessary.

The inclusion of the supporting member of Ercolani and/or Williams would drastically alter the operation of the Cinque device. Retained glasses would be supported by the supporting

member, and need not be in constant contact with the sides of the cup holder portion. For top-heavy glasses, and in particular stemmed glasses, the sides of the cup holder portion would provide no support, and the glass would be very likely to fall out of the cup holder portion when the device was tipped. As the principle of operation of the device would be significantly altered, and the functionality of the device would be impaired to the point that the device would no longer be suitable for the retention of stemmed glasses, Applicant respectfully submits that it would not have been obvious to modify the device of Cinque in view of the teachings of Ercolani and Williams.

II. Non-Statutory Double Patenting Rejection of Claims 1-10

The Examiner has also rejected Claims 1-10 on the grounds of nonstatutory obviousness-type double patenting as unpatentable over Claims 1-4 of U.S. Patent No. 6,702,141 to Cinque in view of Williams, Davis and Morris. Applicant notes that the present application is a divisional application claiming priority to the application which issued as the '141 patent, and that the present application was filed as the result of a restriction requirement issued by the Examiner in the parent application. Thus, the use of the '141 patent in a double patenting rejection is barred by 35 U.S.C. § 121. Applicant respectfully submits that the double patenting rejection based on the '141 patent is impermissible, and respectfully requests the withdrawal of the double patenting rejection.

III. Conclusion

For at least the reasons discussed above, Applicant respectfully submits that the claims are now in condition for allowance, and requests the withdrawal of all pending rejections and the allowance of the same.


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Please charge any additional fees, including any fees for additional extension of time, or credit overpayment to Deposit Account No. 11-1410.

Respectfully submitted,

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